

April 28, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Notice of Ex Parte Communication, *Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106; *Public Safety and Homeland Security Bureau Seeks Comment on Request of the National Association of State 911 Administrators to Address Issues Related to 911 Applications for Smartphones*, RM-11780; *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, WT Docket No. 16-421; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Revising the Historic Preservation Review Process for Wireless Facility Deployments*, WT Docket No. 15-180

Dear Ms. Dortch,

On April 26, 2017, ACT | The App Association (the App Association) met with Commissioner Michael O’Rielly and Erin McGrath, Wireless, Public Safety and International Legal Advisor to Commissioner O’Rielly at the Federal Communications Commission’s (Commission’s) headquarters in Washington, D.C., during which the App Association expressed views on the above-referenced active proceedings. In attendance on behalf of the App Association were: Chris Adams, Southern DNA; David Bain, TM Technologies; Joe Bonnell, Alchemy Security; Luke Chung, FMS, Inc.; Gus Emery, Cosmic Innovations; Marc Fischer, Dogtown Media; Jeff Hadfield, 1564B; Tyler Leonard, Dogtown Media; Jad Meouchy, Remine; Brian Scarpelli, the App Association; Joel Thayer, the App Association; Scott Weiner, NeuEon; and Julie Yack, Colorado Technology Consultants.

In this meeting, the App Association described how it represents more than 5,000 app makers and connected device companies in the mobile economy. Organization members leverage the connectivity of smart devices to create innovative solutions that make our lives better. As the world has quickly embraced mobile technology, the hyper-competitive app ecosystem continues to produce more innovative and more efficient solutions that leverage mobile technologies to drive the global digital economy across

modalities and segments, augmenting consumer interactions and experiences throughout their personal and work lives.

The app industry has been in existence less than a decade, and serves as the driving force behind the rise of smartphones and an ever-increasing number of internet-enabled devices. As we detail in our annually-released *State of the App Economy* report,¹ the app economy drives a thriving ecosystem worth more than \$143 billion, led by U.S. companies, that has added 110,000 new software application developer jobs to the U.S. workforce over the last two years. Further, 83 percent of successful U.S. app companies are located outside Silicon Valley, many of which are in rural areas. The App Association additionally described how the mobile revolution is continuing to improve established industries like healthcare and manufacturing.

The App Association expressed its strong desire that the Commission reduce barriers for deploying new infrastructure as well as supporting innovative and more efficient ways to use wireless spectrum. As high speed wireless broadband availability is essential for the app economy to continue growing, failure by the Commission to meet these infrastructure and spectrum needs will harm the economy and consumers. 5G network and small cell deployments are expected to create 3 million new jobs and boost annual U.S. gross domestic product by \$500 billion, driven by a projected \$275 billion investment from telecom operators.² The App Association applauded the Commission's recent steps taken in a variety of dockets noted above that will examine ways to remove as many regulatory barriers as possible to advance more 5G deployment. U.S. infrastructure is in need of repair and improvement, and the App Association believes that the Commission should play a central role in driving the deployment of a robust internet infrastructure.

The App Association also discussed its views regarding the privacy of customers of broadband and other telecommunications services. The App Association explained that, due to the Commission previously declaring internet service providers (ISPs) as common carriers, the rules—a by-product of that declaration—effectively moved ISP privacy regulation out of the Federal Trade Commission's (FTC's) jurisdiction, introducing legal uncertainty into the small business innovation community. Given the recent decision by Congress regarding Section 222 and overturning the aforementioned change, the App Association reiterated that, if the Commission moves forward to promulgate new privacy rules, such rules be aligned as closely as possible with the approach the FTC takes in protecting consumer privacy.

¹ ACT | The App Association, *State of the App Economy, Fifth Edition* (Apr. 2017), available at <http://actonline.org/2017/04/20/state-of-the-app-economy-report-outlines-growth-dynamism-of-the-app-ecosystem/>.

² Accenture, *Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities* (Jan. 2017), available at https://newsroom.accenture.com/content/1101/files/Accenture_5G-Municipalities-Become-Smart-Cities.pdf.

Lastly, the App Association discussed its views regarding the Commission's Public Notice (PN) on the request of the National Association of State 911 Administrators (NASNA) to Address Issues Related to 911 Applications for Smartphones.³ Consistent with our views submitted to the record, we emphasized that the FTC is the appropriate authority to address the concerns raised by NASNA. Although we are sensitive to the concerns NASNA expresses in its letter, the Commission is not the appropriate venue to handle such concerns. We further suggested that the Commission first engage in a thorough analysis addressing its legal authority over this issue, along with its existing "unequivocal...declar[ation] that it has no intent to regulate edge providers," before moving forward on this proceeding.⁴ We explained that an established path for redress already exists for the concerns raised by NASNA and other like-minded commenters in this docket. The FTC – not the FCC – is the proper venue to address apps and related consumer harms generally, as well as for the specific complaints outlined in NASNA's letter to the outgoing Chairman.

³ *Public Safety and Homeland Security Bureau Seeks Comment on Request of the National Association of State 911 Administrators to Address Issues Related to 911 Applications for Smartphones*, Public Notice, DA 16-1405 (rel. Dec. 19, 2016).

⁴ *In the Matter of Protecting and Promoting the Internet*, 30 FCC Rcd. 5601, GN Docket No. 14-28, Report and Order, at Para. 382 (2015) (writing "[the Commission is] not, however, regulating the Internet, *per se*, or any Internet applications or content. Rather, our reclassification of broadband Internet access service involves only the transmission component of Internet access service." (Emphasis Added)); *see also In the Matter of Consumer Watchdog Petition for Rulemaking to Require Edge Providers to Honor 'Do Not Track' Requests*, DA-15-1266, RM-11757, Order, at Para 1 (2015) (writing "[t]he Commission has been unequivocal in declaring that it has no intent to regulate edge providers.").

Pursuant to the Commission's rules,⁵ this ex parte notice (with meeting materials appended) is being electronically filed via the Commission's Electronic Comment Filing System and a copy of this submission is being provided electronically to the meeting attendees.

Sincerely,

_____/s/_____

Brian Scarpelli
Senior Policy Counsel
ACT | The App Association

Joel Thayer
Associate Policy Counsel
ACT | The App Association

Attached: ACT | The App Association's State of the App Economy, Fifth Edition

⁵ 47 C.F.R. § 1.1206.